BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KIM D. RICHEY	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,000,992
KANSAS GOLF ASSN., INC.	)	
Respondent	)	
	)	
and	)	
	)	
CNA INSURANCE COMPANIES	)	
Insurance Carrier	)	

ORDER

Claimant appeals from a preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Pamela J. Fuller on March 20, 2002.

Issues

Claimant contends the Administrative Law Judge erred in finding claimant's injury did not arise out of and in the course of his employment.

Findings of Fact and Conclusions of Law

Having reviewed the record and considered the briefs of the parties, the Appeals Board (Board) finds that the preliminary hearing Order entered by the Administrative Law Judge should be reversed.

Claimant has been the executive director of the Kansas Golf Association since April 1993. This job requires him to travel frequently. In that capacity claimant was at a golf

tournament in Garden City, Kansas on Sunday, August 26, 2001. When the golf tournament concluded claimant exited the club house and was walking to his car.

> In the process of opening the door and stepping from the curb into the car, something happened and my right knee, like a pop sound, somewhat painful at the time, but - - . . . I wouldn't say there was anything particularly unusual about it except probably shouldn't have stepped from the curb and maybe too far away from the car. Just put a little extra stress on my knee.[1]

Claimant testified that at this time he was still working and was going to drive from the country club to a Dillon's store in Garden City to mail some film back to his office. The photographs were needed for an article to be published in the association's magazine. Claimant was also mailing a computer disk that contained the results of the golf tournament for publication on the association's web site.

Claimant testified that he had immediate pain in the knee. "And subsequently getting out of the car to walk around, it was painful and it was difficult to walk; not impossible, but over the next few days it didn't really particularly swell, but it wasn't - - it wasn't comfortable. It was a real tender area."[2]

Claimant left Garden City on August 26, 2001 to begin a week of vacation. Claimant denied doing much walking or other physical activity during this trip. For the most part he was sitting.

Claimant first sought medical treatment with orthopedic surgeon Brian Healy, M.D., in Kansas City, Missouri on September 5, 2001. Dr. Healy's chart note for that date describes the accident as work related. Ultimately, Dr. Healy performed arthroscopic surgery on the knee.

Claimant initially submitted his medical bills to his health insurance carrier rather than to the workers compensation insurance carrier. Before having the surgery, claimant attempted to obtain authorization from the workers compensation insurance carrier but his claim was denied.

Respondent contends that claimant had completed the business purpose of his trip before exiting the country club house and, therefore, the alleged accident did not occur in the course of claimant's employment. In support of this contention respondent presented

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[1] Tr. of Prel. H. at p. 8 (March 4, 2002).

[2] Tr. of Prel. H. at p. 12 (March 4, 2002).

the recorded statement claimant gave to an insurance adjuster on September 10, 2001.[3] There is no mention in that statement of a trip to Dillon's to mail items back to the respondent's office. Claimant's statement is somewhat inconsistent with his preliminary hearing testimony in other regards as well. For example, in his recorded statement, claimant indicated that he did not think too much about the knee because he was riding in a vehicle. Whereas at the hearing he testified that the knee worsened while riding in the vehicle. In addition, during his testimony claimant denied doing much walking during his vacation but in his statement he indicated that his knee became progressively worse over the next few days once he had gotten out of the car and started walking around. In his statement, claimant said that after about three days he could hardly walk.

Respondent acknowledges that if claimant had not yet completed his duties in connection with the golf tournament and was heading to Dillon's to complete a mailing that was required, then the accident probably occurred in the course of employment. But respondent disputes that the accident arose out of the employment because the act of entering a car is a normal activity of day-to-day living under K.S.A. 44-508(e). Respondent also argues that the injury did not arise out of the employment because it was the result of a personal risk, citing *Martin v. U.S.D. 233.* [4]

Claimant on the other hand, argues that claimant's accidental injury falls withing the "intrinsic travel exception" to the "going and coming rule," citing *Newman v. Bennett*.[5] Claimant asserts his injury is compensable as resulting from an accident which arose out of and in the course of his employment because the "going and coming rule" is not applicable to employment where travel is a necessary and integral part of employment.[6]

The Board finds that claimant's injury "arose out of the nature, conditions, obligations, and incidents of the employment."[7] Claimant was a traveling employee at the time of his accident and the injury he sustained arose out of a risk which was reasonably incidental to the circumstances of his employment. He had traveled by company car from Lawrence to Garden City, Kansas. Obviously, the employer anticipated such travel and

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[3] Tr. of Prel. H. Resp. Ex. 1 (March 4, 2002).

[4] *Martin v. U.S.D. 233,* 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

[5] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

[6] *See Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).

[7] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 278, 899 P.2d 1058 (1995).

considered it to be incidental to the performance of the required job duties. At the time of his injury, claimant was traveling from the country club, his temporary place of work, to a mail service counter which was also in the course of his employment. Where employment requires travel from place to place in the discharge of the employee's duties, an injury which occurs while traveling is an exception to the "going and coming rule."[8] In *Blair v. Shaw*,[9] the Court held that when a business trip is an integral part of the claimant's employment " the entire undertaking is to be considered from a unitary standpoint rather than divisible." Claimant has established that there was a rational causal connection between the work itself and the resulting injury.[10]

Applying the principles announced in the above-referenced cases, the Board concludes that travel was an integral part of claimant's employment and that his injury which occurred while in route to the postal service counter at the Dillon's store was, therefore, an injury which arose out of and in the course of his employment.

Respondent contends a knee injury suffered while simply stepping into a car is not an injury caused by the employment because this is a normal activity of day-to-day living.

K.S.A. 44-508(d) defines "accident" as:

> an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

K.S.A. 44-508(e) defines "personal injury" and "injury" as:

> "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs

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[8] *Schmidt v. Jensen Motors, Inc.*, 208 Kan. 182, 490 P.2d 383 (1971); *Kennedy v. Hull & Dillon Packing Co.*, 130 Kan. 191, 285 Pac. 536 (1930).

[9] *Blair v. Shaw*, 171 Kan. 524, 529, 233 P.2d 731(1951).

[10] *See Angleton v. Starkan, Inc.*, 250 Kan. 711, 828 p.2d 933 (1992).

> of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

It is clear from the record, and the Board finds, that claimant suffered an injury in the course of his employment on August 26, 2001.

In *Demars,*[11] the Supreme Court stated:

> It has long been the rule that injury to a worker by a strain sustained in performing the usual tasks in the usual manner may constitute an accident within the meaning of the worker's compensation act even though there be no outward and discernable force to which the resultant disability can be traced . . . . We note under the definition of accident it is not necessary that an accident be accompanied by a manifestation of force, and it may refer to a series of events. Under the workers' compensation act any lesion in the physical structure of a worker causing harm may be a personal injury if it occurs under the stress of usual labor.

However, in *Martin,*[12] the Court of Appeals addressed an injury which occurred in a way similar to the injury in this case. There the Court found:

> Considering the history of claimant's back problems, it is obvious that almost any everyday activity would have a tendency to aggravate his condition, *i.e.,* bending over to tie his shoes, getting up to adjust the television, or exiting from his own truck while on a vacation trip. This is a risk that is personal to the worker and not compensable.

In this case, getting into a car was a part of claimant's usual job. Respondent correctly asserts that it can also be a regular part of normal day-to-day living. K.S.A. 44-508(e), as amended, which defines "injury" excludes "normal activities of day-to-day living" from being found to have been caused by the employment.

The Board has struggled with this 1993 addition to the definitions statute. The conclusion reached is that the Legislature intended to codify and strengthen the holdings

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[11] *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 379, 573 P.2d 1036 (1978).

[12] *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 300, 615 P.2d 168 (1980).

in *Martin* and *Boeckmann.*[13] But claimant's injury in this case is distinguishable from both *Martin* and *Boeckmann.* Although claimant had a prior left knee condition, the right knee had not been treated before. There is no medical evidence of a preexisting condition. Furthermore, the Court in *Boeckmann* distinguished cases in which "the injury was shown to be sufficiently related to a particular strain or episode of physical exertion" to support a finding of compensability.[14] The Board concludes that the Legislature did not intend for the "normal activities of day-to-day living" to be so broadly defined as to include injuries caused by the strain or physical exertion of work.[15]

In this case, claimant was in the course of employment at the time of the accident. Furthermore, the injury was not from a risk that was solely personal to the claimant. Accordingly, the August 26, 2001 accident was a new and distinct injury, which arose out of and was directly caused by claimant's employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Medical Treatment by Administrative Law Judge Pamela J. Fuller should be, and is hereby, reversed and remanded to the Administrative Law Judge for further orders consistent herewith.

IT IS SO ORDERED.

Dated this _____ day of July 2002.

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BOARD MEMBER

c: Seth G. Valerius, Attorney for Claimant
D. Steven Marsh, Attorney for Respondent and Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director

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[13] *Boeckmann v. Goodyear Tire & Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).

[14] *Id* at 737.

[15] *See e.g., Turley v. State of Kansas*, WCAB Docket No. 247,457 (Nov. 1999); *Longoria v. Wesley Rehab Hospital*, WCAB Docket No. 220,244 (June 1997); *Devine v. Rainbow Baking Co.*, WCAB Docket No. 202,860 (April 1996); *Loader v. Medicalodges, Inc.*, WCAB Docket No. 192,396 (Feb. 1995); *Munoz v. Frito-Lay, Inc.*, WCAB Docket No. 183,437 (April 1994).